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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052197
Party	Plaintiff Terri Yenko Gould, Executor
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Submission	Motion to Extend
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Attachments	Supp Motion to File Out Of Time.pdf (4 pages)(80693 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Terri Yenko Gould, Executor,)	
)	
Petitioner)	
)	
v.)	Cancellation 92052197
)	
SuperCar Collectibles, Limited)	
)	
Registrant)	
_____)	

**PETITIONER'S SUPPLEMENTAL MOTION
TO FILE TESTIMONY OUT OF TIME**

The Executor of the Estate of Donald Frank Yenke, Petitioner (Plaintiff) herein, moves for an order accepting the filing of its testimony and exhibits out of time.

The Executor's testimony period expired April 22, 2011, but because of electronic transmission problems could not be completed until May 14, 2011. However, all of the Estate's testimony (declarations and exhibits) were already in the Respondent's hands on or before the April 22 date, by means of electronic mail. The Respondent will in no way be prejudiced by the granting of this motion.

Being in Paris, France, at the time, the undersigned on April 22 was required to file and serve (electronically) an emergency motion for a seven-day extension. The Respondent now objects to that motion (and will presumably object to this motion as well) because it claims it had never formally agreed to accept any papers by electronic mail.

This is a remarkable reversal, considering that Respondent's counsel Mr. Rob Buyan (along with his predecessor Mr. Scott Johnson) have from April 2008 through January 2011 - a period of over three years - uncomplainingly sent and/or accepted at least one hundred eight (108) electronic communications and transmittals to and from the undersigned. If not implied consent, these actions are certainly a waiver of objection to communication and service by

electronic means. (Paper copies of this and the previous motion are also being served by mail to forestall yet another unnecessary objection pertaining to service.)

To repeat the obvious: the trademark at issue in this case is the name of a singularly famous man: YENKO. In the photograph to the right is the real Donald Frank Yenko, the nationally recognized racing and sports car constructor who perished in the crash of his private airplane in 1987, and whose Estate is the petitioner herein.



The standard Don Yenko publicity photo.



The man in the photograph to the left is NOT Donald Frank Yenko. He is Jeffrey "Jeff" Leonard, president of the respondent General Marketing Capital Inc. (GMCI), who on February 8, 1999 applied to register YENKO, knowing it was Don Yenko's name and that he had no rights in it, for "*Mail order catalogue services featuring parts and accessories for the restoration of classic automobiles; wholesale distributor-ships featuring parts and accessories for the restoration of classic automobiles*".

From that date forward Mr. Leonard has been methodically vacuuming up and claiming every trademark-able vestige of Don Yenko's history and heritage. He and GMCI have have acquired thus far a total of twelve (12) U.S. trademark registrations and pending intent-to-use applications for the name YENKO, among them the perhaps over-ambitious SN 77149025 for "*Motor land vehicles...*" (now on its fourth proof of use extension), and of course the mark in issue which was purchased from its former owner on September 9, 2010, right in the midst of this very cancelation proceeding.

The purpose of this cancellation proceeding is therefore to return these rights to his Estate, which is and always has been its rightful owner.

The Estate's testimony, now on file and the subject of the present motion, testimonial record now shows that Mr. Leonard has trying to take for himself and GMCI the good name and reputation - indeed, the very identity - of Don Yenke. That is what the Respondent must try to keep out of the record by whatever means it can, procedural or otherwise, because it now knows it is flogging an indefensible case.

CONCLUSION

For the reasons set forth above, and in the interest of giving both parties a full and fair opportunity to present their cases, The Estate of Donald Frank Yenke (Petitioner-Plaintiff herein) moves for an Order deeming the Estate's testimony to have been timely filed.

Date: May 19, 2011

Respectfully submitted

/George E. Bullwinkel/

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CERTIFICATE OF SERVICE

George E. Bullwinkel, an attorney of record, hereby certifies that one copy of the foregoing PETITIONER'S SUPPLEMENTAL MOTION TO FILE TESTIMONY OUT OF TIME was served by mailing, first class, postage prepaid, on May 19, 2011, and also by electronic mail, to the following:

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